

**ORIGINAL**

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.

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CLERK

OCTOBER TERM 1995

NO. 95-1906

UNITED STATES OF AMERICA,

PETITIONER,

vs.

VERNON WATTS,

RESPONDENT,

UNITED STATES OF AMERICA,

PETITIONER,

vs.

CHERYL PUTRA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS

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RESPONDENT CHERYL PUTRA'S BRIEF IN  
OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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RESPONDENT CHERYL PUTRA'S BRIEF IN  
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Respondent Putra requests that this Court deny the  
Government's Petition for a Writ of Certiorari to the United States

Court of Appeals for the Ninth Circuit. The opinion of the Court of Appeals appears at 78 F.3d. 1386, and at Appendix B to the Petition for a Writ of Certiorari.

Certiorari should be denied because there is a suggestion of mootness. The Government concedes in the Petition for a Writ of Certiorari, page 6, footnote 1, that Respondent Putra has already been released from prison, having served all of her incarceration time. The only sentencing controversy, therefore, that exists in this case is whether the sentencing court on remand will reduce her term of supervised release, in light of the Ninth's Circuit ruling herein which will reduce her guideline sentencing range from 27-33 months to 15-21 months.

#### JURISDICTION

The Government invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

#### STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to the provisions cited by the Government, Respondent relies on Article III, Section 2 of the United States Constitution. See, Appendix, 1.

#### STATEMENT OF THE CASE AND FACTS

The Respondent, Cheryl Putra, on April 15, 1993, was charged in the Fifth Superseding Indictment in Count 2 with conspiring, from January 27, 1987 to May 16, 1992, to knowingly and intentionally distribute a quantity of cocaine in excess of 500 grams of cocaine, in violation of 21 U.S.C. 846 and 853. Respondent

was alleged to have committed two overt acts in furtherance of the conspiracy. Overt Act 20 alleged: "On or about May 8, 1992, defendants Vassilios Liaskos and Cheryl Putra, met with an individual in Honolulu, Hawaii and distributed approximately one ounce of cocaine." Overt Act 21 alleged: On or about May 9, 1992 defendant Vassilios Liaskos and Cheryl Putra met with an individual in Honolulu, Hawaii, and distributed approximately five ounces of cocaine."

Respondent was charged in Count 18 with aiding and abetting Vassilios Liaskos on May 8, 1992 by knowingly and intentionally possessing, with the intention to distribute, approximately one ounce of cocaine, in violation of 21 U.S.C. 841(a).

Respondent was charged in Count 19 with aiding and abetting Vassilios Liaskos on May 9, 1992 by knowingly and intentionally possessing, with the intention to distribute, approximately five ounces of cocaine, in violation of 21 U.S.C. 841(a). These counts, it should be noted, constituted the overt acts Cheryl Putra, Respondent, allegedly committed in furtherance of the alleged conspiracy. (See, Fifth Superseding Indictment at Clerk's Record "CR" 71, and Excerpt of Record "ER" at 1-20).

The United States District Court had subject matter jurisdiction pursuant to 18 U.S.C. 3231 and conducted a jury trial which resulted in a Judgment on January 6, 1994. (CR 153; ER 26-29).

REASONS FOR DENYING THE PETITION

Respondent was found not guilty of Counts 2 and 19, but was found guilty of Count 18, aiding and abetting the distribution of one ounce of cocaine.

Respondent filed her sentencing objections on Dec. 6, 1993 (CR 151). The entire Jan. 3, 1994 sentencing proceeding transcript is included in the excerpt of record as (ER 113-135).

Respondent urged the Court to refuse to take into consideration alleged conduct of Respondent for which she was acquitted. She was acquitted of Count 19, a charge alleging aiding and abetting in the distribution of 140.6 grams of cocaine. Without the Court taking into consideration this conduct, her base offense level would have been 14, so Respondent's guideline range would have been 15-21 months. Instead, because the Court took this conduct into consideration, and determined the base offense level by aggregating the cocaine allegedly involved in both the May 8 and May 9, 1992 sales, Putra's offense level went up to 18, and she fell into a 27-33 month guideline range. She was sentenced to a 27 month period of imprisonment. Since Respondent's sentence was at least 6 months in excess of what she could have been lawfully sentenced to, Respondent requested of the Ninth Circuit that the case be remanded for resentencing.

A. THERE IS A SUGGESTION OF MOOTNESS HEREIN, AS THE ONLY ISSUE UPON REMAND IS WHETHER THE DISTRICT COURT WILL SENTENCE RESPONDENT TO A REDUCED TERM OF SUPERVISED RELEASE IN LIGHT OF RESPONDENT HAVING ALREADY COMPLETED THE 27 MONTH TERM OF IMPRISONMENT ORIGINALLY IMPOSED BY THE DISTRICT COURT, THEREFORE, THERE IS NO SIGNIFICANT ACTUAL CASE OR CONTROVERSY.

Certiorari should be denied because there is a suggestion of mootness. The Government concedes in the Petition for a Writ of Certiorari, page 6, footnote 1, that Respondent Putra has already been released from prison, having served all of her incarceration time, including the upward departure sentence. The only sentencing controversy, therefore, that exists in this case is whether the sentencing court on remand will reduce her term of supervised release, in light of the Ninth's Circuit ruling herein which will reduce her guideline sentencing range from 27-33 months to 15-21 months.

The Government's Petition for a Writ of Certiorari, page 6, footnote 1, reads as follows:

"Putra was released from prison on January 12, 1996, after completing the 27 month term of imprisonment originally imposed by the district court. Putra's release does not render this case moot, because she is currently serving a three year term of supervised release, and that portion of her sentence could be affected by further review. Under the Ninth Circuit's ruling, the district on remand will be required to impose a shorter prison term than under the guidelines. In that event, respondent might under Ninth Circuit law, "be entitled to an earlier end to (her) term of supervised release." United States vs. Smith, 991 F.2d. 1468, 1470 (9th Cir. 1993); see also United States vs. Montenegro-Rojo, 908 F.2d. 425, 431 n.8 (9th Cir. 1990).

While counsel for Respondent, upon remand, fully intends to request of the District Court to reduce Respondent's term of supervised release, the question is whether this case should be heard the United States Supreme Court when this is the only issue remaining between the parties after a lengthy trial and a lengthy appellate process.

This Court, like all Federal Courts, is a court of limited jurisdiction. See, United States Constitution Article III, Section 2: See also, Appendix A. As such, its power to review the constitutionality of government acts is derived from and limited by its responsibility for resolving concrete disputes brought before it for decision. See, Marbury vs. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 2d 60 (1803).

Federal courts do not have jurisdiction to decide moot cases because they have the constitutional authority to decide only actual cases or controversies. Iron Arrow Honor Society vs. Heckler, 464 U.S. 67, 70, 104 S.Ct. 373, 375, 78 L.Ed.2d. 58, 60 (1983).

To satisfy the Article III case-or-controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision. A case becomes moot when interim relief or events have deprived the court of the ability to redress the party's injuries. United States vs. Alder Creek Water Co., 823 F.2d. 343, 345 (9th Cir. 1987).

The Constitutional aspect of the justiciability analysis

focuses on whether an actual case or controversy as required by Article III is presented, while the precedential part asks whether it is appropriate for this case to be litigated in a federal court by these parties at this time. Socialist Labor Party vs. Gilligan, 406 U.S. 583, 588-589, 92 S.Ct. 1716, 1719, 32 L.Ed. 2d 317 (1972).

While the ramifications of this sentencing issue are great for the Federal and State court systems of the United States, the impact upon the parties herein for the reasons previously stated, regardless of the decision herein, will be minimal.

The only issue at this point is whether the United States of America's Petition for A Writ of Certiorari should be granted. Respondent will certainly agree that there are significant consequences resulting from the split in the Federal Circuit Courts on this very important sentencing issue. The split is likely to effect the substantial majority of all multi-count criminal cases in the Federal court system, at least. Since Respondent has prevailed to date on this issue, there is no reason at this time for Respondent to cite the various constitutional provisions which would be implicated by the granting of the Petition. If, however, certiorari were to be granted, and the merits of this case required to be briefed, a host of constitutional and other corollary issues will be raised, far beyond the statutory construction issues the government has raised in its Petition for A Writ of Certiorari, including, but not limited to, those raised by Respondent Watts in

his Brief in Opposition to the Petition for A Writ of Certiorari e.g. Due Process, Double Jeopardy, collateral estoppel, and res judicata issues.

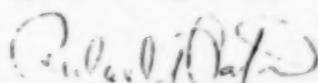
At this time, however, suffice it to argue, that the government has not cited to any provision in the Sentencing Guidelines, or application notes, that explicitly allows for the utilization of acquitted conduct as relevant conduct. It also appears that the Sentencing Guideline Commission is considering modifications to the sentencing guidelines, which would enable it to develop "options to limit the use of acquitted conduct at sentencing." 61 Federal Register 34465.

#### CONCLUSION

There is a suggestion of mootness in this case in that the impact of any decision herein on the parties will be restricted to whether the sentencing Court, on remand, will reduce the term of Respondent's supervised release. As such, no significant justiciable case or controversy exists which would warrant the granting of the petition for a writ of certiorari herein.

September, 1996.

Respectfully submitted,



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Attorney for Respondent  
CHERYL PUTRA

#### APPENDIX

##### UNITED STATES CONSTITUTION, ARTICLE III, SECTION 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.